



# U.S. DEPARTMENT of STATE

## Jamaica

### Country Reports on Human Rights Practices - [2004](#)

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Jamaica is a constitutional parliamentary democracy. In the free and fair 2002 general elections, Prime Minister P.J. Patterson's People's National Party (PNP) won 34 of the 60 seats in the House of Representatives. The PNP also was allocated 13 seats in the 21-seat Senate. The judiciary is independent but lacked adequate resources.

The Jamaica Constabulary Force (JCF) had primary responsibility for internal security and was assisted by the Island Special Constabulary Force. The Jamaica Defence Force (JDF--army, air wing, and coast guard) was charged with national defense, marine narcotics interdiction, and JCF support. The JDF had no mandate to maintain law and order and no powers of arrest (although the coast guard had powers of maritime arrest), unless so ordered by the Prime Minister. Two JDF battalions were detached as part of a joint internal security operation to assist the JCF in patrolling certain communities. The Prime Minister occasionally authorized the JDF to cordon and search. The Ministry of National Security oversaw the JCF and the JDF. Civilian authorities generally maintained effective control of the security forces; however, some members of the security forces committed serious human rights abuses.

The market economy was based largely on tourism, production of primary products (bauxite and aluminum, sugar, bananas), and remittances. The country's population was approximately 2.7 million. The economy grew by an estimated 3 percent during the year. While wages and benefits generally kept pace with inflation, there was a large gap between the wealthy and the impoverished. On September 11, heavy rains and strong winds from Hurricane Ivan damaged nearly every sector of the economy. It was estimated that the hurricane adversely impacted gross domestic product growth by approximately 2 percent.

The Government generally respected the human rights of its citizens; however, there were serious problems in some areas. Members of the security forces committed unlawful killings. Mob violence against and vigilante killings of those suspected of breaking the law remained a problem. Police and prison guards allegedly abused detainees and prisoners. Although the Government moved to investigate incidents of police abuses and punish some of those police involved, continued impunity for police who commit abuses remained a problem. Prison and jail conditions remained poor; overcrowding, brutality against detainees, and poor sanitary conditions were problems. There were reports of arbitrary arrest and detention. The judicial system was overburdened, and lengthy delays in trials were common. Violence and discrimination against women remained problems. Trafficking in persons was a problem. There were cases of societal discrimination against persons with disabilities. Violence against individuals suspected or known to be homosexuals occurred, as did discrimination against persons living with HIV/AIDS. Child labor was a problem.

## RESPECT FOR HUMAN RIGHTS

### Section 1 Respect for the Integrity of the Person, Including

#### Freedom From:

##### a. Arbitrary or Unlawful Deprivation of Life

There were no reported politically motivated killings by the Government or its agents; however, security forces committed some unlawful or unwarranted killings during the year.

The police frequently employed lethal force in apprehending criminal suspects. Police encounters with criminals resulted in 119 deaths (including 11 police officers) compared with 127 deaths (including 13 police officers) in 2003. While allegations of "police murder" remained frequent, the validity of some allegations was suspect. The country faced a critical crime situation with a homicide rate exceeding 54 per 100,000 persons, the highest in its history. Well-armed gangs that trafficked in narcotics and guns controlled many inner-city communities. The gangs often were equipped better than the police force and conducted coordinated ambushes of joint security patrols.

In October, the U.N. Commission on Human Rights released the report of the U.N. Special Rapporteur on Extrajudicial,

Summary, or Arbitrary Executions, which stated that the country had an unacceptably high number of questionable police shootings and should hold more policemen accountable for their actions. The Ministry of Foreign Affairs and Foreign Trade called the report "fairly balanced," and noted that measures to improve the situation had been taken.

On March 2, police killed three men in Burnt Savannah, Westmoreland, in what police described as a shootout. However, eyewitnesses claimed that police ordered the men from their car and shot them at close range. The civic action group Families Against State Terrorism met with witnesses and assisted in protecting the crime scene. The investigation by the Bureau of Special Investigations (BSI) continued at year's end.

On September 19, members of the JDF allegedly killed Sandra Sewell and Gayon Alcott in August Town, St. Andrew. JDF soldiers, along with police officers, were patrolling the area to enforce a curfew during the state of public emergency that was imposed during and immediately following Hurricane Ivan. At year's end, an investigation by the BSI, with assistance from an outside forensic expert provided by Amnesty International (AI), was ongoing.

On December 24, police killed 15-year-old Donovan Hayles and 7-year-old Shakeira Thompson and injured two others in Old Braeton, St. Catherine. The JCF described the incident as a shootout with gunmen; however, local residents claimed Hayles was disarmed, and that police randomly fired assault rifles to give the appearance of a shootout, killing Thompson in the process. The BSI was investigating the incident at year's end.

On April 21, following months of investigations, the Department of Public Prosecutions (DPP) charged six JCF officers, including Senior JCF Superintendent Reneto Adams, in the 2003 killing of four people at a home in Crawle, Clarendon. At year's end, a court date was set for February 2005.

Following independent investigations by AI, the DPP overturned the decision of a coroner's jury and charged six police officers in the 2001 killing of seven youths in Braeton, St. Catherine. The trial was scheduled to begin in January 2005.

In April, the JCF announced that officers from Scotland Yard had been called to assist with the investigation of the 2003 police killing of two elderly men in the community of Flankers, St. James. The BSI-led investigation was ongoing at year's end.

On December 2, a 12-member jury in the Home Circuit Court acquitted two policemen charged with the 2002 murder of 7-year-old Romaine Edwards.

There were no developments and none were expected in the 2002 police killing of Daemon Roache.

On October 1, the Chief Justice denied a joint family-nongovernmental organization (NGO) appeal for judicial review of the 2000 police killing of Janice Allen, reportedly for a lack of evidence. AI stated that the investigation was "marred by witness intimidation, official incompetence, and delay." The DPP had ordered the responsible police officer arrested and charged in 2003, but a judge subsequently dismissed the case. The family was planning an appeal for judicial review in the Supreme Court, and was awaiting a court date at year's end.

During the year, at least two detainees died while in police custody; there was no evidence of negligence.

Vigilantism and spontaneous mob killings in response to crime continued to be a problem. There were at least 14 vigilante killings during the year, with varying motives. On August 9, a mob killed a man in the parish of St. Catherine who was accused of killing a woman and injuring her daughter. Human rights advocates contended that police did not consider such killings a priority and expressed concern that the perpetrators rarely were charged.

On June 9, unknown assailants stabbed and killed Brian Williamson, one of the country's most visible homosexual rights activists (see Section 5).

#### b. Disappearance

There were no reports of politically motivated disappearances.

On December 23, police allegedly abducted two men in Kingston. Witnesses reported that two members of the JCF Organized Crime Unit (OCU) handcuffed and took two men into custody. At year's end, the two men remained missing, and one of the OCU officers was detained in police custody. The media reported that the JCF called in Scotland Yard officers to assist in the investigation.

#### c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits such practices; however, reports of physical abuse of prisoners by guards continued, despite efforts by the Government to remove abusive guards and improve procedures. There were also credible reports that police abused detainees in custody.

The law prohibits homosexual relationships, and a culture of severe discrimination persisted. There were numerous cases of violence against persons based on sexual orientation, including by police and vigilante groups (see Section 5).

In March, six police officers were accused of raping a prostitute in Negril, Westmoreland. The officers were transferred following the incident but remained on front line duty. The BSI was investigating the case and awaiting results of DNA tests at year's end.

Prison conditions remained poor and often were characterized by overcrowding, inadequate diet, poor sanitary conditions, and insufficient medical care. There were no reports of prison riots. There were at least two reports of riots at police detention centers.

At year's end, the proceedings brought by the Public Defender seeking compensation from the Government for a prisoner who allegedly was beaten to death by other prisoners in 2002 at Mandeville police station were halted after the results of an independent post-mortem proved inconclusive.

There were no new developments and none were expected in two 2002 cases of prisoners in Bull Bay and Manchester police lockups who died in police custody.

A separate prison for women--the Fort Augusta Women's Prison--was housed in a 19th century fort. Sanitary conditions were poor, although far less so than in the men's prisons because there was less overcrowding. Fort Augusta was also relatively safer and had less violence than the men's prisons, despite inmate complaints of beatings by guards. The Constitution prohibits the incarceration of children in adult prisons; however, in practice, some juveniles were held with adults. The majority of pretrial detainees were held in police custody, either in police stations or in remand centers, separate from convicted prisoners.

In general, the Government allowed private groups, voluntary organizations, international human rights organizations, and the media to visit prisons and monitor prison conditions, and such visits took place during the year.

#### d. Arbitrary Arrest or Detention

The Constabulary Force Act permits the arrest of persons "reasonably suspected" of having committed a crime. There were some reports of arbitrary arrest during the year, and the authorities continued to detain suspects, particularly those from poor neighborhoods, without bringing them before a judge within the prescribed period.

The JCF falls under the direction of the Ministry of National Security and is headed by a Commissioner who delegates authority through the ranks to its constables. The force maintains divisions focusing on community policing, special response, intelligence gathering, and internal affairs. Faced with rapidly increasing rate of killings, the JCF generally was not effective. The country experienced the highest level of violent crime in its history, and the perception of corruption and impunity within the force were serious problems that contributed to a lack of public confidence in the institution. Human rights groups identified systematically poor investigative procedures and weak oversight mechanisms. Failure to protect witnesses led to the dismissal of criminal trials.

The JCF conducted both administrative and criminal investigations into all incidents involving fatal shootings by the police. The JCF's BSI, which employed 26 investigators, specifically addresses police shootings. The BSI completed investigations of 32 of 383 shooting incidents during the year and sent them to the DPP. The DPP ruled on 13 cases and sent 5 to criminal courts. One officer was found criminally liable. The BSI supplemented the JCF Office of Professional Responsibility, which investigated police corruption and other misconduct, and the civilian Police Public Complaints Authority (PPCA), which oversaw investigations of the other two bodies and could initiate its own investigations. The PPCA had seven investigators.

The JCF continued an initiative of "community policing" to address the problem of long-standing antipathy between the security forces and many poor inner-city neighborhoods. The Police Federation conducted training programs for policemen on citizens' rights. The Government and the Independent Jamaica Council for Human Rights developed human rights materials that were used in a number of primary schools across the country. The group was developing additional educational materials at year's end.

Human rights advocates contended that police did not consider killings by vigilante mobs a priority and expressed concern that the perpetrators rarely were charged (see Sections 1.a and 5).

The law requires detained suspects to be charged or released within 24 hours of arrest. The law also requires police to contact duty counsel (a private attorney who volunteers to represent detainees at police stations and until cases go to trial), if requested by the detainee, upon detention; however, the authorities continued to wait until after detainees had been identified in an identification lineup before contacting duty counsel for them. There was a functioning bail system. The State provides indigent detainees access to counsel through the legal aid program, and detainees were provided with prompt access to family members.

The law requires police to present a detainee in court within a reasonable time period; however, in practice authorities continued to detain suspects for lengthy periods, which the Government attributed to an overburdened court system (see Section 1.e.). Magistrates were required to inquire at least once a week into the welfare of each person listed by the JCF as detained.

e. Denial of Fair Public Trial

The Constitution provides for an independent judiciary, and the Government generally respected this provision in practice; however, the judicial system was overburdened and operated with inadequate resources.

Three courts handle criminal matters at the trial level. Resident magistrates try misdemeanors. A Supreme Court judge tries more serious felonies, except for felonies involving firearms, which are tried before a judge of the Gun Court. Defendants have the right to appeal a conviction in any of the three trial courts to the Court of Appeal, which is the highest court in the country. This appeal process resulted in frequent delays. The Constitution allows the Court of Appeal and the Parliament, as well as defendants in civil and criminal cases, and plaintiffs in civil cases, to refer cases to the Judicial Committee of the Privy Council in the United Kingdom as a final court of appeal.

The Constitution provides for the right to a fair trial, and an independent judiciary generally enforced this right. However, the judiciary's lack of sufficient staff and resources hindered due process, and the BSI also had a large backlog. Trials in many cases were delayed for years, and other cases were dismissed because files could not be located or had been destroyed. A night court had some success in reducing the backlog of cases. The Supreme Court used mediation through the Dispute Resolution Foundation as an alternative to traditional trials, which alleviated some of the backlog in that court. The Resident Magistrate Courts also used alternative dispute resolution in limited cases. The lack of an effective witness protection program led to the dismissal of a number of cases involving killings.

Most trials are public and use juries. Defendants have the right to counsel. Legal Aid attorneys were available to defend the indigent, except those charged with certain offenses under the Money Laundering Act or Dangerous Drugs Act. The Public Defender may bring cases for persons who have had their constitutional rights violated. The Public Defender's Office contracted private attorneys to represent clients; however, funds were insufficient to meet the demand, and attorneys sometimes requested payment from clients.

There were no reports of political prisoners.

f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The Constitution prohibits such actions; however, the revised Constabulary Force Act gives security personnel broad powers of search and seizure. The Act allows search without a warrant of a person on board or disembarking from a ship or boat, if a police officer has good reason to be suspicious. In practice, the police conducted searches without warrants. There were no allegations of unauthorized wiretapping by the police.

On February 10, the courts cleared Devon Francis of charges of breaching the Public Utilities Act in 2000 after he wiretapped telephones without proper authorization.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice and did not restrict academic freedom.

The independent media were active and expressed a wide variety of views without restriction. However, some local media professionals expressed concern that the country's libel law limited their freedom of expression. Specifically, news outlets reported the need to self-censor investigative reports because of the potential for courts to award high damages in cases of defamation. In April, the Director of Public Prosecutions threatened to monitor and prosecute talk show hosts who discussed criminal cases pending before the courts. The DPP expressed concern that widespread public discussion in the media of specific aspects of criminal cases made it difficult to select a jury that would ensure a fair hearing by an independent and impartial court, as required by the Constitution. However, no such prosecutions had been enforced at year's end.

At year's end, the Gleaner Company continued to fight a lawsuit that arose from a story it published concerning a corrupt public official.

The Government did not restrict access to the Internet.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for freedom of assembly and association, and the Government generally respected these rights in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government generally respected this right in practice.

Members of the Rastafarian community complained that law enforcement officials unfairly targeted them. However, it was not clear whether such complaints reflected discrimination on the basis of religious belief or were due to the group's illegal use of marijuana as part of Rastafarian religious practice.

For a more detailed discussion, see the [2004 International Religious Freedom Report](#).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

The Constitution provides for these rights, and the Government generally respected them in practice.

The Constitution prohibits forced exile and there were no reports that it occurred.

The Constitution does not provide for the granting of asylum or refugee status in accordance with the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol, but the Government has established a system for providing protection to refugees. In practice, the Government provided protection against refoulement, the return of persons to a country where they feared persecution, and handled refugee or asylum cases administratively. The Government cooperated with the office of the U.N. High Commissioner for Refugees (UNHCR) and other humanitarian organizations in assisting refugees and asylum seekers but did not grant refugee status or asylum.

The Government provided temporary protection to more than 500 individuals who did not qualify as refugees under the 1951 Convention/1967 Protocol. The Government, with the assistance of UNCHR, provided 500 Haitians with temporary protection and resettlement. Approximately 281 Haitians applied to the Government for refugee status, but their applications were denied in accordance with the 1951 Convention. Approximately 200 Haitians appealed the decision, and trials were scheduled to begin in January 2005.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic elections held on the basis of universal suffrage. All citizens age 18 and over have the right to vote by secret ballot. However, in recent elections, voters living in "garrison communities" in inner-city areas dominated by one of the two major political parties often faced substantial influence and pressure from politically connected gangs and young men hired by political parties, which impeded the free exercise of their right to vote.

Two political parties--the PNP and the Jamaica Labor Party (JLP)--have alternated in power since the first elections in 1944. The PNP held 34 of the 60 seats in the popularly elected House of Representatives and 13 of the 21 seats in the appointed Senate.

Following the July killing of reputed Spanish Town gang leader Oliver Smith, police investigators learned that the car Smith was driving at the time of his death was registered to Olivia Grange, a Member of Parliament. Grange, a former JLP deputy leader, explained that she had simply assisted her constituent by co-signing the car loan. The incident raised public questions of government corruption. The investigation was ongoing at year's end.

On December 9, the Senate noted the omission of party financing regulations as a glaring gap in the 2003 Corruption Prevention Act. On the same day, the Senate passed an amendment to the Act that closed reporting loopholes for state employees.

The Access to Information Act (ATI), signed in 2002, entered its first phase on January 5. The ATI provided public access to information held by seven government ministries and agencies.

There were no legal restrictions on the participation of women in politics. There were 7 women in the 60-seat House of Representatives, and 4 women in the 21-seat Senate. Three of the 17 cabinet members were women, and women held approximately 30 percent of the senior civil service positions.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

A number of domestic and international human rights groups generally operated without government restriction, investigating and publishing their findings on human rights cases. Government officials were cooperative and responsive to their views.

The Independent Jamaica Council for Human Rights was the country's only formal organization concerned with all aspects of human rights. The NGO Jamaicans for Justice focused on the issues of police impunity, extrajudicial killings, and excessive use of force by the police and wrote a weekly newspaper column. Jamaicans for Justice reported that undercover police regularly attended its meetings; nevertheless, the group professed to have a cordial relationship with the police and sat on two of the police consultative boards.

The Public Defender's Office brings cases on behalf of those who charged that their constitutional rights were violated. The office contracted private attorneys to bring suits against the Government on behalf of private citizens. During the year, the Public Defender began working on an overall anti-discrimination bill, which would create an Anti-Discrimination Commission to make decisions about grievances. The Public Defender won compensation for at least four of the families of victims killed during the 2001 shoot-out in Tivoli Gardens, West Kingston, between members of the community, the JCF, and the JDF. A class action lawsuit was pending at year's end, but parties involved believed that all outstanding cases would be settled within a year.

## Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The Constitution prohibits discrimination on grounds of race, place of origin, political opinions, color, creed, or sex. The Government generally enforced these prohibitions in practice, although there continued to be widespread discrimination on the basis of political opinion in the distribution of scarce governmental benefits, including employment, particularly in the garrison communities (see Section 3).

### Women

Social and cultural traditions perpetuate violence against women, including spousal abuse. Violence against women was widespread, but many women were reluctant to acknowledge or report abusive behavior, leading to wide variations in estimates of its extent. The Domestic Violence Act provides remedies for domestic violence, including restraining orders and other noncustodial sentencing. Breaching a restraining order is punishable by a fine of up to approximately \$160 (J\$10,000) and 6 months' imprisonment. The Government's Bureau of Women's Affairs operated crisis hotlines and shelters and managed a public education campaign to raise the profile of domestic violence.

Rape was illegal and carried a penalty of up to 25 years' imprisonment with hard labor. During the year, the number of reported incidents of rape decreased by 8 percent; however, NGOs stressed that the vast majority of rapes were not reported. The JCF rape investigative and juvenile unit, which was headed by a female deputy superintendent, handled sex crimes. During the year, in Kingston/St. Andrew, there were 208 arrests, of which 50 cases went to court and 25 ultimately were convicted and sentenced.

On August 8, the country's most prominent evangelical pastor, Bishop Herro Blair, delivered a sermon in Kingston in which he reportedly warned young women that current styles of dress invited rape. The Bureau of Women's Affairs rejected the claim as baseless.

The law prohibits prostitution; however, it was widespread, particularly in tourist areas.

There is no legislation that addresses sexual harassment, and it was a problem. There were reports of sexual harassment of women by the police, but some observers believed that women often did not report such incidents because there was no legal remedy.

The Constitution and the Employment Act accord women full legal equality; however, in practice, women suffered from discrimination in the workplace and often earned less than their male counterparts. The Bureau of Women's Affairs, reporting to the Minister of Development, oversaw programs to protect the legal rights of women. These programs had limited effect but raised the awareness of problems affecting women.

During the year, the Government took steps to reduce gender bias in legislation. On February 17, Parliament passed the Family Property (Rights of Spouses) Act to provide for the equitable division of property between spouses following a divorce. On December 7, Parliament passed an amendment to the Domestic Violence Act that expanded the definition of a child to anyone under 18 years old and extended the provisions of the act to include couples living in separate domiciles.

There was an active community of women's rights groups, including Women's Media Watch, the Women's Political Caucus, the St. Peter Claver Women's Housing Cooperative, the Women's Construction Collective, the Sistren Theatre Collective, Woman Inc., and the Centre for Gender and Development Studies at the University of the West Indies. Among the major concerns of these groups was the protection of victims of sexual abuse, participation of women in the political process, and legislative reforms affecting women.

### Children

The Government was committed to improving children's welfare. The Ministry of Education, Youth, and Culture was responsible for implementation of the Government's programs for children. Public primary education was free, universal, and compulsory for students between the ages of 6 and 11, and the Ministry of Education reported that 99 percent of children in that age group were enrolled in school. However, economic circumstances obliged thousands of children to stay home to help with housework and avoid school fees. As a result, attendance rates at primary schools averaged 78 percent, although some rural areas reported attendance as low as 50 percent. More than 70 percent of children between the ages of 12 and 16 had access to secondary school, and UNICEF reported that most children completed secondary education.

Medical care was widely available, and boys and girls enjoyed equal access.

There was no societal pattern of abuse of children; however, there were numerous reports of rape and incest, particularly in inner cities. NGOs reported that inner city gang leaders and sometimes even fathers initiated sex with young girls as a "right." There were 409 cases of statutory rape--sex with girls under 16--reported, an 8 percent increase over the same period in 2003. The Government expressed concern about child abuse and acknowledged that incidents were underreported. The Child Development Agency (CDA) held training sessions to familiarize police officers with the rights of children and to prepare them to enforce the Child Care and Protection Act.

Child prostitution and trafficking for the purposes of sexual exploitation were problems (see Section 5, Trafficking).

In March, the House of Representatives and the Senate passed the Child Care and Protection Act, which replaced the Adoption of Children Act and the Juvenile Act. The Act generally provided for more support for the family unit and the improved safety of children, including prohibitions against trafficking in minors. It also established mechanisms, including a central child abuse registry and an Office of Children's Advocate, to monitor and defend the well being of children.

On May 31, the Government commissioned the Ministry of Health's CDA as an executive agency to consolidate all children's services under one administrative umbrella, and to oversee the successful implementation of the Child Care and Protection Act.

#### Trafficking in Persons

The law does not prohibit specifically trafficking in persons; however, there were laws against assault and fraud, and other laws established various immigration and customs regulations. Trafficking in children was a problem, and there were reports that persons were trafficked primarily within the country.

The Child Care and Protection Act passed during the year specifically prohibits the sale or trafficking of minors and provides that violators receive the maximum penalty under the law. The law subjected convicted traffickers to a fine or imprisonment with hard labor for a term not exceeding 10 years, or both.

The International Labor Organization (ILO) estimated that several hundred minors were involved in the country's sex trade.

The country was also a transit country for illegal migrants moving to the United States and Canada, some of whom were believed to be trafficking victims. Groups at a special risk for trafficking included rural migrants who sought work in cities and tourist areas, usually in the sex industry. Corruption among immigration officials in facilitating the unauthorized international movement of persons was a concern. In November, the Government instituted a passenger entry and exit system to enhance efforts to detect transnational trafficking.

While there was no formal policy for protecting child trafficking victims, the Government enforced the Child Care and Protection Act. There were no government-funded shelters specifically for trafficking victims, but the CDA managed facilities for at-risk children. The Government provided funding to NGOs that worked to reintegrate child laborers who were victims of trafficking.

The Ministry of Health designed a public awareness campaign to inform the public about the Child Care and Protection Act, which contains a provision that prohibits trafficking in minors. The Ministry of Education sponsored programs to encourage families to keep children in school.

#### Persons with Disabilities

No laws mandate accessibility for persons with disabilities, and such persons encountered discrimination in employment and denial of access to schools. Health care and other state services were reported to be universally available. Several government agencies and NGOs provided services and employment to various groups of persons with disabilities. The Statistical Institute of Jamaica reported that out of a disabled population of approximately 163,000, about 14 percent was employed gainfully.

#### Other Societal Abuses and Discrimination

The Offenses Against the Person Act prohibits "acts of gross indecency" (generally interpreted as any kind of physical intimacy) between men, in public or in private and is punishable by 10 years in prison. Prime Minister Patterson stated that the country would not be pressured to change its anti-homosexual laws.

The Jamaica Forum for Lesbians, All Sexuals, and Gays (J-FLAG) continued to report allegations of human rights abuses, including police harassment, arbitrary detention, mob attacks, stabbings, harassment of homosexual patients by hospital and prison staff, and targeted shootings of homosexuals. Police often did not investigate such incidents. Some of the country's most famous dancehall singers gained the attention of international human rights groups during the year for their homophobic lyrics, which incited violence against homosexuals. A 2001 poll found that 96 percent of citizens were opposed to legalizing homosexual activity.

On June 9, Brian Williamson, a prominent homosexual rights activist and founding member of J-FLAG, was found stabbed to death at his home in Kingston. Human rights groups believed that the brutality of Williamson's death indicated a hate crime, but the JCF maintained that the crime was a robbery. A suspect was remanded in custody at year's end.

On June 24, a group of armed men, reportedly including famous dancehall artist Buju Banton, forced their way into a house in Kingston and beat two occupants while shouting homophobic insults. Human Rights Watch expressed concern that Banton may never face charges and warned that the artist's fame and the stigma attached to the homosexual victims hindered a thorough and expedient police investigation. At year's end, Banton had been arrested and released on bail; there was no information concerning the others involved.

Male inmates deemed by prison wardens to be homosexual are held in a separate facility for their protection. The method used for determining their sexual orientation is subjective and not regulated by the prison system. There were numerous reports of violence against homosexual inmates, perpetrated both by the wardens and by other inmates, but few inmates sought recourse through the prison system.

Homosexual men were hesitant to report incidents against them because of fear for their physical well being. Human rights NGOs and government entities agreed that brutality against homosexuals, both by police and private citizens, was widespread in the community.

No laws protected persons living with HIV/AIDS from discrimination. Human rights NGOs reported severe stigma and discrimination for this group. Although health care facilities were prepared adequately to handle patients with HIV/AIDS, health care workers often neglected such patients.

## Section 6 Worker Rights

### a. The Right of Association

The law provides for the right to form or join a trade union, and unions functioned freely and independently of the Government. The Labor Relations and Industrial Disputes Act (LRIDA) defines worker rights. There was a spectrum of national unions, some of which were affiliated with political parties. Between 10 and 15 percent of the work force was unionized. Some companies laid off union workers then rehired them as contractors with reduced pay and benefits, a practice considered legal as long as workers receive severance pay.

### b. The Right to Organize and Bargain Collectively

The law permits unions to conduct their activities without interference, and the Government protected this right in practice. An independent Industrial Disputes Tribunal (IDT) hears cases when management and labor fail to reach agreement. Any cases not resolved by the IDT pass to the civil courts. The IDT generally handled 35 to 40 cases each year. Most were decided within 90 days, but some took longer to resolve due to the complexity of the dispute or delays requested by the parties.

Collective bargaining is denied to a bargaining unit if no single union represents at least 40 percent of the workers in the unit in question or when the union seeking recognition for collective bargaining purposes does not obtain 50 percent of the votes of the total number of workers (whether or not they are affiliated with the union). The ILO Committee of Experts (COE) considered that, where there was no collective bargaining agreement and where a trade union did not obtain 50 percent of the votes of the total number of workers, the union should be able to negotiate at least on behalf of its own members. The COE requested the Government to take necessary measures to amend this legislation. The Government contended that this would unduly lengthen negotiations.

The LRIDA neither authorizes nor prohibits the right to strike, but strikes did occur. Striking workers could interrupt work without criminal liability but could not be assured of keeping their jobs. Other than in the case of prison guards, there was no evidence of any workers losing their jobs over a strike action. Workers in 10 broad categories of "essential services" are prohibited from striking, a provision the ILO repeatedly criticized as overly inclusive.

Domestic labor laws applied equally to the "free zones" (export processing zones). However, there were no unionized companies in any of the 3 publicly owned zones, which employed approximately 6,000 workers. Organizers attributed this circumstance to resistance to organizing efforts by foreign owners in the zones, but attempts to organize plants within the zones continued. Company-controlled "workers' councils" handled grievance resolution at most free zone companies, but they did not negotiate wages and conditions with management. Management determined wages and benefits within the free zones. The Ministry of Labor is required to perform comprehensive factory inspections in the free zones once each year, and, in practice, it performed them at 6- to 9-month intervals.

### c. Prohibition of Forced or Compulsory Labor

The Constitution does not specifically prohibit forced or compulsory labor, including by children, but other than child prostitution, there were no reports that such practices occurred (see Section 5).



d. Prohibition of Child Labor and Minimum Age for Employment

The Child Care and Protection Act provides that children under the age of 12 shall not be employed except by parents or guardians, and that such employment may be only in domestic, agricultural, or horticultural work. It also prohibits children under the age of 15 from industrial employment. The police are mandated with conducting child labor inspections, and the CDA is charged with finding places of safety for children. However, according to CDA officials, resources to investigate exploitative child labor were insufficient. Children under the age of 12 peddled goods and services or begged on city streets. There were also reports that underage children were employed illegally in fishing communities and in prostitution (see Section 5).

In June, the ILO, the International Program on the Elimination of Child Labor (IPEC), and the Ministry of Labor and Social Security hosted a workshop as part of the National Program for the Prevention and Elimination of Child Labor. The resulting draft plan of action defined a clear path for future action and identified lead agencies to seek the resources necessary to develop the plan.

e. Acceptable Conditions of Work

The Government sets the minimum wage, after receiving recommendations from the National Minimum Wage Advisory Commission. During the year, the minimum wage was changed to \$32 (J\$2,000) per week and \$1.20 (J\$80) per hour for private security guards. The minimum wage did not provide a decent standard of living for a worker and family. Most workers were paid more than the legal minimum, except in the tourism industry.

The law provides for a standard 40-hour workweek and mandates at least 1 day of rest per week. Work in excess of 40 hours per week or 8 hours per day must be compensated at overtime rates, a provision that was observed widely. The law does not prohibit excessive compulsory overtime, and some employees, including security guards, regularly are required to work 12-hour shifts without overtime compensation.

The Ministry of Labor's Industrial Safety Division sets and enforces industrial health and safety standards, mainly through factory inspections. Insufficient staffing in the Ministries of Labor, Finance, National Security, and the Public Service contributed to the difficulties in enforcing workplace regulations.

Industrial accident rates remained low. The law provides workers with the right to remove themselves from dangerous work situations without jeopardy to their continued employment if they are trade union members or covered by the Factories Act. The law does not specifically protect other categories of workers in those circumstances.